

### **REMARKS**

In response to the final Official Action of January 13 2006, a clarifying amendment has been made to claims 1 and 15, and reconsideration of the final rejection is requested in light of the following remarks. Claims 1-28 are pending in the application, and are all rejected. Claims 1-28 are rejected under 35 U.S.C. §103(a) as unpatentable over Khan et al. (U.S. Patent 6,400,954) (hereinafter Khan) in view of Wieczorek et al. (U.S. Patent 6,125,278) (hereinafter Wieczorek).

With this response independent claims 1 and 15 are amended. All amendments are fully supported by the specification as originally filed. Specifically, support for the amendments can be found at least at page 6, lines 28-32 and page 8, lines 20-24 of the specification. For reasons set forth below, no new issues are raised by the amendment to claims 1 and 15, and therefore this Amendment After Final should be entered.

The amendments to claims 1 and 15 are made to emphasize that prioritizing the data communication occurs when the available capacity at future locations is less than at the current location, and has nothing to do with priority based on the type of service, e.g. voice or speech. See paragraph 1, page 1 January 13, 2006 Office Action. The amendment could not have been presented earlier because the continued interpretation given to the claims by the Office could not have been anticipated in light of the applicant's previous remarks. Therefore, it is respectfully submitted that the amendments to claims 1 and 15 raise no new issues and do not require a further search.

Paragraph 1, pages 2-3 of the final Office Action of January 13, 2006 states that Khan teaches scheduling data communications to or from a mobile station for which a communication has been established based upon the available capacity of the network at both the current and future locations. The assertions of the Office Action notwithstanding, applicant respectfully submits that there is no teaching or suggestion in Khan of scheduling data communication to or from a mobile station in accordance with available capacity of a network at both the current location and future locations of the mobile station.

First, the Office Action states at paragraph 3, page 4 that Khan does not teach tracking the locations of a mobile station moving in the cellular telecommunication network. Since Khan does not teach tracking the location of a mobile station, as stated in the Office Action, then it is impossible for Khan to schedule data communication in accordance with the available capacity of the network at current and future locations of the mobile station. The scheduling of data communication recited in claim 1 requires comparison of network capacity at a current location and a future location, which in turn requires determination of the future location of the mobile station. See e.g. claim 1 (“when the available capacity at future locations is less than at the current location). Without teaching or suggesting the tracking of a mobile station, Khan cannot teach or suggest determining a future location of a mobile station, and then in turn cannot teach or suggest scheduling the data communication to or from the mobile station *in accordance* with the available capacity of the network at *both* the current location and future locations, as recited in claim 1.

Second, the priorities referred to in Khan are based upon classes of traffic. See column 6, lines 1-4 and 41-49. Each service class is allocated a specific bandwidth on the network that provides for a maximum call blocking/delay result. See column 6, lines 36-38. The type of service in Khan determines the priority given to a specific service. See column 6, lines 11-14 (speech service is highly delay/blocking sensitive, and could be accorded highest priority, while data communications could share the remaining resources). The priority given to a type of service then determines which communications are blocked or delayed based on the current load on a network interface. See column 6, lines 41-49. In contrast, the method recited in claim 1 prioritizes communications from a mobile station if the available network capacity at future locations is less than that at the current location. The amendment to claim 1 emphasizes that prioritizing of the data communication as recited in claim 1 has nothing to do with classes of traffic defined by the type of service. The amendment emphasizes this feature by stating that traffic to or from the mobile station is given “a priority while the mobile station *is still in* a less congested area of the cellular telecommunication network.” As discussed above, the

scheduling of data communication recited in claim 1 requires comparison of network capacity at different locations, rather than just determination of a load on an access network interface as discussed in Khan. See column 6, lines 34-36. Therefore, Khan fails to teach or suggest scheduling data communications to or from a mobile station in accordance with the available capacity of the network at both the current location and future locations of the mobile station.

Wieczorek also fails to teach or suggest scheduling data communications to or from a mobile station in accordance with the available capacity of the network at both the current location and future locations of the mobile station. Furthermore, the combination of Khan and Wieczorek also fails to suggest prioritizing the data communication to or from the mobile station at the current location of the mobile station when the available capacity at future locations is less than that at the current location and delaying the data communication to or from the mobile station at the current location of the mobile station when the available capacity at future locations is higher than that at the current location. Therefore, Khan and Wieczorek fail to teach or suggest all of the limitations recited in claim 1, and claim 1 is patentable over the cited references.

It is therefore respectfully submitted that claim 1 is not obvious in view of Khan, further in view of Wieczorek. Since claim 1 is believed to be distinguished over Khan and Wieczorek, it is respectfully submitted that claims 2-14, all of which are ultimately dependent on claim 1, are further distinguished over Khan in view of Wieczorek.


Independent telecommunication system claim 15 is similar to method claim 1 and has been slightly amended in a similar manner. For reasons as presented above with regard to claim 1, it is therefore respectfully submitted that claim 15 is distinguished over Khan in view of Wieczorek. Since claim 15 is distinguished over Khan in view of Wieczorek, it is also respectfully submitted that claims 16-28, all of which are ultimately dependent from system claim 15 are further distinguished over Khan in view of Wieczorek.

In view of the above arguments, it is respectfully submitted that the present application as amended is in condition for allowance and such action is earnestly solicited.

The undersigned respectfully submits that no fee is due for filing this Amendment. The Commissioner is hereby authorized to charge to deposit account 23-0442 any fee deficiency required to submit this paper.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read "Keith R. Obert", is written over a horizontal line.

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